

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 107 Locksmith Services
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Anderson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1844

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	20 Y, 0 N, As CS	Snider	Cooper
2)	Agriculture & Natural Resources Policy Committee		Snider	Reese
3)	General Government Policy Council			
4)	Natural Resources Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

This bill creates the Florida Locksmith Services Act within Part XII, Ch. 559, F.S., to regulate locksmith services. Each locksmith service business is required to be licensed by the Department of Agriculture and Consumer Services (department) and be responsible for maintaining proper records, training and supervision of its employees. Licensing is biennial and each business is required to maintain a minimum of \$100,000 in liability insurance, among other requirements.

Applicants for a license are required to identify each employee providing locksmith services as well as each officer, director, owner and partner and submit fingerprints from these individuals to the department to forward to the Florida Department of Law Enforcement and the Federal Bureau of Investigation for a background check and retain a copy of the background check in the individual's personnel file. Other provisions include basic training requirements for employees in areas such as industry ethics and the *Americans with Disabilities Act*, as well as compliance with advertising requirements.

Further, the bill provides for criminal, administrative, and civil penalties. The bill creates fifteen criminal violations and provides for private rights of action in civil cases.

The bill is projected by the department to be self-funding with initial funds being drawn from the department's General Inspection Trust Fund.

The bill has an effective date of July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill creates a regulatory scheme for the locksmith industry and requires licensing of locksmith service providers by the Department of Agriculture and Consumer Services (department).

Present Situation

At present, there is no statewide regulation of the locksmith industry. Miami-Dade County presently regulates locksmiths.

According to the Associated Locksmiths of America, “[a] professional trained locksmith/security professional may do some or all of the following: install locks, deadbolts and other mechanical or electronic locking devices to safeguard homes, businesses, vehicles and other property. Locksmiths also may modify or repair such devices, rekey locks, make duplicate keys or cards, generate or program new keys/cards for locks whose keys/cards have been lost and respond to emergency calls to unlock vehicles, homes and businesses that have been locked accidentally, or whose locks have malfunctioned. Some locksmiths install and service electronic alarm and surveillance systems. Many locksmiths specify, design, provide, install and service a wide range of electronic access control systems and closed circuit television (CCTV) systems. Because of the integration of electronic security systems with computers and networks, some locksmiths maintain security hardware and software for computer systems.”¹

Effect of Proposed Changes

This bill creates Part XII “Locksmith Services” within Chapter 559, F.S., (“Florida Locksmith Services Act”). The bill requires all locksmith services businesses to be licensed by the department before providing locksmith services in Florida. This bill does not license individual locksmiths; only locksmith businesses will be licensed.

The bill preempts all local regulation of the locksmith industry beginning July 1, 2010. The bill provides certain exceptions to the licensing requirement (e.g. emergency personnel, sales representatives, hardware stores, and landlords).

¹ “About Us.” Associated Locksmiths of America. <http://www.aloa.org/about/>. Last accessed March 8, 2009.

Application Requirements

The department is directed to collect contact information for all applicants including the business' physical address, the names of employee locksmiths, the applicant's Florida agent for service of process, and other contact information. Additionally, the bill defines information collection and background check requirements for the business' owner (e.g. officers and directors of a corporation; general partners for a partnership).

Additionally, the applicant is required to submit information regarding all locksmith employees. This required information includes affidavits regarding the employee's criminal record, as well as fingerprints. The Florida Department of Law Enforcement is directed to process the fingerprints for a background check by the FDLE as well as the Federal Bureau of Investigation. All required information must be submitted to the department within ten days of the hiring of a new locksmith employee. The FDLE is permitted retain the fingerprints in the statewide automated fingerprint identification system pursuant to s. 943.051, F.S.²

A license must be issued for each locksmith services business, and the bill provides that licenses are non-transferrable and non-assignable. As read, the plain language of this section is unclear and could be interpreted as requiring a license to be issued to each individual location of the same business, as the definition of "locksmith services business" in the bill is defined as "any person, who, for compensation, provides [...] locksmith services [...] or who maintains a place of business in this state."

This bill permits the department to deny a license to any locksmith services business if the applicant or any of its directors, partners, or others have:

- Failed to meet the requirements set forth in the bill;
- Failed to comply with civil or administrative penalties (including fines);
- Received any civil, criminal, or administrative adjudication in any jurisdiction;
- Pending criminal, administrative, or enforcement proceedings in any jurisdiction; or
- Had a judgment entered against them pursuant to the Florida Deceptive and Unfair Trade Practices Act.

This bill provides for reciprocity with other states, provided that the state's licensure programs collect the same information required by this legislation.

Fees

This bill caps licensure fees at \$800 for businesses employing one to five locksmiths and \$1600 for those employing more than five. The renewal cost for licensure is the same and requires a verification of no changes in criminal background checks. This bill requires the license to be renewed biennially. The renewal application requires submission of the proof of insurance, verification of no changes in criminal history, the annual license fees, and criminal history background checks for all new employees. The department is permitted to stagger initial registrations to ensure a similar amount in each year and set fees at a lower rate.

Employee Records and Background Checks

This bill prohibits the employment of locksmith employees convicted of a felony within the past ten years or convicted of a crime involving fraud or dishonesty (e.g. trespass, theft, larceny, dealing in stolen goods, embezzlement) within the past ten years. This bill requires the Florida Department of Law Enforcement to furnish the Department of Agriculture and Consumer Services any arrest and conviction records in its possession for any individual applying for or holding a locksmith service business license. If the department does not receive the required criminal background information

before the expiration of time permitted by Chapter 120, F.S.³ to issue a determination on the license application, the time period may be extended until what time as department receives the required information.

Employees are required to complete training in courses in “industry ethics,” the *Americans with Disabilities Act*, the *Florida Fire Prevention Code*, and the *Life Safety Code*. The bill further requires employers to maintain a photograph, a background check, and certificate of completion of the required ethics and training courses for each locksmith employee and issue photo identification cards to each employee. The photo identification card is required to list the employee’s name, the business’ name, the locksmith license number, and contain the word “locksmith.” Employees are required to carry the card on their person at all times when performing locksmith services. Additionally, the card shall specify whether the employee is a “Locksmith” or “Apprentice Locksmith.”

Insurance Requirement

Each locksmith services business is required to obtain and maintain insurance coverage and to provide proof of insurance as part of the licensing process. This bill requires liability insurance with coverage of at least \$100,000 per incident for loss or damages resulting from the negligence of the locksmith business or employees. Failure to maintain the insurance would allow the department to suspend the business’ license. The insurance policy must be issued by an insurance company or carrier licensed to transact business in this state pursuant to the Florida Insurance Code.

Display of License

Locksmith services businesses are required to display a copy of their license issued by the department at the place of business and in a manner easily readable by the general public. In the alternative, for mobile locksmith services, a copy of the license shall be maintained in each service vehicle for presentation to any person of the general public, any law enforcement officer, or any state or local official upon request. The bill requires all advertisements, service vehicles, and forms to include the license number and the name of the business.

Further, any person applying for a local business tax receipt to engage in business as a locksmith services business must exhibit a valid license certificate from the department before the tax receipt may be issued or renewed.

Customer’s Rights

The bill will require locksmiths to accept at least two out of three categories of payment:

- a. Cash, cashier’s check, money order, or traveler’s check;
- b. Valid personal check with appropriate identifiable information;
- c. Valid credit card, which shall include, but not be limited to Visa or MasterCard.

Additionally, the bill requires that the locksmith services business must clearly and conspicuously disclose in the work order, invoice, or sales receipt, the forms of payment that the locksmith will accept. Additionally, a copy of each work order, invoice, or sales receipt be retained for two years and shall include the name of the person performing the service.

The bill prohibits and makes unlawful any requirement that a person waive his or her rights provided in this bill as a precondition to the performance of the locksmith services.

Advisory Council

The bill creates an advisory council consisting of nine members and appointed by the Commissioner of Agriculture. The bill specifies that five members must be individuals employed by separate, licensed

³ *Administrative Procedure Act*

locksmith services businesses and who do not provide automotive-only locksmith services; two members must be employed by separate, licensed locksmith services businesses that provide automotive-only locksmith services; one member must be an electrical contractor certified under Chapter 489, F.S.;⁴ and one member must be a consumer who is not connected with the locksmith industry.

General Violations

The bill declares that any violation of the provisions of this legislation constitutes a deceptive and unfair trade practice under Part II of Chapter 501, F.S., the *Florida Deceptive and Unfair Trade Practices Act* and administrative rules adopted pursuant to that act.

The bill provides that any moneys recovered by the department as a penalty for violations shall be deposited in the department's General Inspection Trust Fund.

Criminal Penalties

The bill creates fifteen criminal violations. A person guilty of these violations is guilty of a first-degree misdemeanor.⁵ Additionally, if these violations are committed with the intent to commit burglary, robbery, or larceny, then the punishment is a third-degree felony.⁶

Additionally, the bill provides for a criminal violation tied into administrative action. This provision states that defacing or removing a sign indicating the closure of the business by the department without the written authorization is a second-degree misdemeanor.⁷

Administrative Penalties

The bill requires the department to process consumer complaints as defined by current law.

The bill requires a locksmith services business to allow department personnel to enter its place of business to ascertain whether the license certificate is current. If the business refuses entry, the department may seek injunctive relief in circuit court to compel compliance.

If the department finds that a business is in violation of the provisions of this bill or rules adopted pursuant to this legislation, the department may:

- Issue a notice of noncompliance under s. 120.695, F.S.;⁸
- Impose an administrative fine not to exceed \$10,000 for each act or omission;
- Direct that the locksmith services business cease and desist specified activities;
- Refuse to issue a license or revoke or suspend a license;
- Place the license on probation for a period of time, subject to the conditions specified by the department.

The bill directs that administrative proceedings, which could result in the entry of an order imposing any of the penalties expressed in the bill, are governed by Chapter 120 F.S.⁹ The department is permitted to assess the sanctioned party for the cost of conducting administrative proceedings when issuing a

⁴ "Contracting;" Part II concerns Electrical and Alarm System Contracting.

⁵ ss. 775.082 and 775.083, F.S. provide that a first-degree misdemeanor carries a jail sentence not exceeding one year as well as a fine not exceeding \$1,000.

⁶ ss. 775.082, 775.083, and 775.084, F.S. provide that a third-degree felony carries a penalty of imprisonment for not more than five years and a fine of not more than \$5,000.

⁷ s. 775.082 and 775.083, F.S. provide that a second-degree misdemeanor carries a penalty of a jail sentence of not more than 60 days and a fine of not more than \$500.

⁸ This section expresses that its intent is to be the department's first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it.

⁹ *Administrative Procedure Act*

final order imposing an administrative fine or suspending, revoking, or denying initial issuance or renewal of a license.

The department is also directed to post a prominent “Closed by Order of the Department” sign on any locksmith services business that has had its license suspended or revoked. The department shall also post the sign if the business has been judicially or administratively determined to be operating without a license.

Civil Penalties & Remedies

The bill permits a customer injured by a violation of this bill to bring an action in the appropriate court for relief. Additionally the prevailing party may collect damages as well as court costs and reasonable attorney’s fees. A customer may also bring an action for injunctive relief in circuit court.

Further, the department is authorized to institute a civil action to recover any penalties or damages authorized by this bill and for injunctive relief to compel compliance with the provisions of this legislation. The department is permitted to seek a civil penalty of up to \$10,000 for each violation. Additionally, the department may seek restitution for and on behalf of any customer injured by a violation.

The bill provides that any agreement that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the locksmith services business, as provided by this bill, is void.

Effective Date

This bill takes effect on July 1, 2009.

B. SECTION DIRECTORY:

Section 1. Creates Part XII “Locksmith Services” within Chapter 559, F.S., (“Florida Locksmith Services Act”).

Section 2. Provides that the bill shall take effect on July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	<u>FY 09-10</u>	<u>FY 10-11</u>	<u>FY 11-12</u>
Revenues (General Inspection Trust Fund)			
Recurring			
(2,400 Registrants estimated)	\$1,080,000	\$1,080,000	\$1,080,000
<u>1st year</u>			
1,200 Registrants @\$600 biennial(*)			
1,200 Registrants @\$300 annual(*)			
<u>Subsequent Years</u>			
1,200 Registrants @ \$600 biennial			
2,400 Initial fingerprint Background checks @\$45.25	<u>108,600</u>	<u>5,430</u>	<u>5,430</u>
(5% of 2,400 or 120 estimated in later yrs)	1,188,600	698,430	698,430
Non-Recurring	\$0	\$0	\$0
Total Revenue	\$1,188,600	\$698,430	\$698,430

(*) \$600 is an estimate of the amount needed to cover the costs to implement this bill (\$300 per year for two years, per business), based on the estimated number of locksmith businesses statewide.

Fees for this program will be set by rule and are based upon estimated costs to the Department. In an effort to keep fees at the lowest possible level and ensure efficient regulation, the Department will initially set the fees at \$300 for businesses with one to five employees and \$600 for businesses with over six employees. To implement the process, approximately 50% of registrants will register for one year and approximately 50% will register for two years. During the second year the 50% that registered for one year will then register for two years. This will facilitate the biennial registration process, provide annualized revenue and facilitate program operating costs.

Expenditures

1. Recurring (GITF)

a. Salaries (positions)			
6-0442 Regulatory Consultant-pay grade 20	292,182	298,026	303,987
2-8351 Senior Financial Investigator-pay grade 23	<u>111,496</u>	<u>113,726</u>	<u>116,000</u>
Total Salaries	403,678	411,752	419,987
b. Expenses			
8-Professional Expense package	53,600	53,600	53,600
Operating cost of Motor Vehicles	6,000	6,000	6,000
Travel-Council meetings	<u>10,000</u>	<u>10,000</u>	<u>10,000</u>
Total Expenses	69,600	69,600	69,600
c. Special Categories			
FDLE Fingerprint 5% of 2,400 @\$45.25 (5% of initial registrants estimated in subsequent years)	5,430	5,430	5,430
8-Human Resources Allocation	<u>3,208</u>	<u>3,208</u>	<u>3,208</u>
Total Special Categories	8,638	8,638	8,638
d. AGMIC Budget Entity			
(GITF-Contracted Services category)8 PCs Maint.	1,000	1,000	1,000
8-Additional Siemens System Maint.	1,560	1,560	1,560
8-Additional Computer System Maint.	<u>2,700</u>	<u>2,700</u>	<u>2,700</u>
Total AGMIC Costs	5,260	5,260	5,260
Total Recurring Costs:	487,176	495,250	503,485

2. Non-recurring (GITF)

a. Expenses (GITF)	
8-Professional Packages @ 3,412	27,296
b. OCO (GITF)	
8-Personal Computers @ 1,000	8,000
c. Special Categories (GITF)	
Acquisition of Motor Vehicles	37,800
Background Checks (initial background checks) (95% of 2,400 @ \$45.25)	103,170
Contracted Services-100 hours @ \$85.00 (Programming for online use of "E-Commerce for license renewals and other features)	85,000
Siemens-Reprogramming & additional card in	9,000

telephone system

AGMIC-software application & DOCS Integration 10,000
(GITF-Contracted Services category)

Total Non-Recurring 28,266

Non-Operating Costs (GITF)

Administrative/Indirect costs	53,919	54,997	56,097
General Revenue Service Charge (7.3%)	<u>78,840</u>	<u>52,560</u>	<u>52,560</u>
Total Non-Operating Costs	132,759	107,557	108,657
Grand Total of Costs (GITF)	\$900,201	\$602,807	\$612,142

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Fiscal impact on local governments should be slight, depending on whether there was previous local regulation of locksmiths.
2. Expenditures: The bill does not appear to require any expenditure by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DACS, approximately 7,000 state and national background check the first year, 500 checks in subsequent years for new licensees and 7,000 state and national checks for biennial license renewals. Figures based on hard card fingerprint submission.

Year 1: 7,000 x \$54.25 = \$379,750
Year 2: 500 x \$54.25 = \$27,125
Year 3: 7,000 x \$54.25 = \$379,750 (license renewals)

Each request is \$54.25. Twenty-four dollars goes into the FDLE Operating Trust Fund; \$30.25 from each request is forwarded to the FBI. The result is not revenue for Florida, but an expense to the private sector.

D. FISCAL COMMENTS:

The department has estimated that 2,400 businesses will be subject to licensing based on answers provided by the Associated Locksmiths of America (ALOA) on the Sunrise Questionnaire.¹⁰ The ALOA reports that it has 397 members in Florida.¹¹ Nationally, the Associated Locksmiths of America believe they represent 1/6th of all locksmiths. In 2006, when Tennessee enacted locksmith regulation, the ALOA reported a membership of 98 members, and Tennessee eventually registered approximately 575 locksmiths under the act.¹² It should be noted that Tennessee appears to license individual locksmiths rather than locksmith businesses.¹³ The department is unable to provide any other estimate for the number of locksmith businesses in Florida.¹⁴

¹⁰ Sunrise Questionnaire For Groups Seeking New Regulation. On file with the Insurance, Business, and Financial Affairs Policy Committee.

¹¹ Telephone conversation with Tim McMullen, JD, CAE, Legislative Manager, Associated Locksmiths of America, Inc. Feb. 26, 2009.

¹² Id.

¹³ *Locksmith Licensing Act of 2006*, Tennessee Annotated Code, s. 62-11-102.

¹⁴ Telephone conversation with David McInnes, Department of Agriculture and Consumer Services, Office of Legislative Affairs. February 19, 2009.

The department has indicated the need for eight new employees to implement the provisions of this bill and has not indicated an intention to stagger the hiring of these employees. Some first year savings might be realized if the department staggered the hiring of the new employees as needed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Department of Agriculture and Consumer Services. It requires the department to adopt rules relating to the following requirements for licensing locksmith services businesses:

- Requirements and processes for background checks and fingerprint checks for locksmith employees,
- Establishment of forms to implement the bill,
- Establishment of necessary fees based upon the department's costs to administer the bill,
- Development of a schedule to maintain an updated fee for the FBI background checks,
- Development of methods to obtain and renew photographs for photo identification of locksmiths,
- Adoption of rules relating to the use and display of licenses and license numbers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Preemption

This bill will preempt local regulation of locksmith services on July 1, 2010. This bill takes effect on July 1, 2009. Thus, locksmiths will be required to comply with both state and local regulation for a period of one year.

Violations

There are a number of potential issues with the violations that carry criminal penalties in this bill. In general, many of the bill's violation provisions are duplicative of present law, provide for a penalty less severe than currently provided by law, or may be broader than intended.

The bill codifies the list of violations as s. 559.954, F.S. and the specific criminal penalties for those violations as s. 559.958, F.S.

(1)(a) Perform or offer to perform locksmith services without having or acting under a valid license issued by the department under this part.

This provision could be interpreted such that a person who offers, as a good deed, to help open a car door could be charged with a violation of this part.

(2)(a) Fraudulently misuse any customer's credit card.

Fraudulent misuse of a customer's credit card is already covered under current law.¹⁵ Under the provisions of this bill, fraudulent misuse of a customer's credit card is a first-degree misdemeanor. Under current law, fraudulent misuse is a first-degree misdemeanor only if the fraudulently charged amount is less than \$300 in a six month period. If the amount is more than \$300 or certain other conditions are met, fraudulent misuse of a customer's credit card is a third-degree felony.¹⁶ Thus, this bill may lessen the penalty currently provided by law in some instances.

(2)(c) Fail or refuse, after notice, to provide any law enforcement officer or the department with any document or record or disclose any information required to be produced or disclosed.

This provision may be overbroad. In general, "a statute is overbroad [...] when the legislature sets a net large enough to catch all possible offenders and leaves it to the courts to step inside and determine who is being lawfully detained and who should be set free."¹⁷

At present, this provision can be read to require a person to disclose anything that a law enforcement officer or the department chooses to require to be disclosed (whether relevant to this act or not). It would be more clear and effective if the phrase "by this part" was inserted at the end of the sentence.

559.958 (2) A person who violates s. 559.953 with the intent of committing burglary, robbery, or larceny commits a felony of the third degree [...].

Section 559.958, F.S., relates to unauthorized possession of locksmithing tools by a person who is not a licensed locksmith or fails to meet one of the exceptions stated in the bill.

The use of "robbery" and "larceny" in this section appears unnecessary. Burglary is the entering of a dwelling, structure, or conveyance with intent to commit an offense therein.¹⁸ Robbery is "[...] the taking of money or other property [...] when in the course of taking there is the use of force, violence, assault, or putting in fear."¹⁹ Larceny is theft, which is the taking of a person's property with the intent to deprive the other person of a right to the property or benefit from the property or appropriating the property for the use of a person not entitled to use the property.²⁰ Locksmithing tools would most likely be used for burglary. The connection with robbery and larceny is the possibility of theft (and violence during the theft) as a result of the burglary. But burglary in and of itself is not synonymous with robbery and larceny.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Insurance, Business & Financial Affairs Policy Committee adopted a strike-all amendment introduced by Rep. Anderson. This amendment made numerous changes to the bill. These included changes to the criminal penalties, additional definitions, and requirements for serving on the Florida Locksmith Advisory Council among other changes.

¹⁵ s. 817.62, F.S.

¹⁶ s. 817.67, F.S.

¹⁷ 73 Am. Jur. 2d Statutes § 243.

¹⁸ s. 810.02, F.S.

¹⁹ s. 812.13, F.S.

²⁰ s. 812.014, F.S.